

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nora Chanko	Team: Squad #3	CCRB Case #: 201609903	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/10/2016 1:16 PM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 5/10/2018	EO SOL 5/10/2018	
Date/Time CV Reported Thu, 12/01/2016 7:33 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 12/01/2016 7:33 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Olivier Bagley	11996	941383	ESS 04
3. DTS Joseph Cortez	4159	941592	ESS 04
4. CPT Theodore Federoff	00000	919026	030 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Daliza Matoslugo	4420	948245	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Olivier Bagley	Abuse: Police Officer Olivier Bagley threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
C.DTS Joseph Cortez	Abuse: Detective Joseph Cortez threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
D.CPT Theodore Federoff	Abuse: Captain Theodore Federoff damaged § 87(2)(b)'s property.	§ 87(2)(b)
E.CPT Theodore Federoff	Abuse: Captain Theodore Federoff entered and searched § 87(2)(b), in the Bronx.	§ 87(2)(b)
F.CPT Theodore Federoff	Abuse: Captain Theodore Federoff forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
G.POM Olivier Bagley	Force: Police Officer Olivier Bagley used physical force against § 87(2)(b).	§ 87(2)(b)
H.DTS Joseph Cortez	Force: Detective Joseph Cortez used physical force against § 87(2)(b).	§ 87(2)(b)
I.POM Olivier Bagley	Abuse: Police Officer Olivier Bagley entered and searched § 87(2)(b), in the Bronx.	§ 87(2)(b)
J.DTS Joseph Cortez	Abuse: Detective Joseph Cortez entered and searched § 87(2)(b), in the Bronx.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on December 1, 2016 via the call processing system. On November 10, 2016, § 87(2)(b) was in her apartment at § 87(2)(b) when § 87(2)(b), § 87(2)(b) the organization appointed as § 87(2)(b)'s legal guardian, came to her apartment with a locksmith and attempted to gain entry to conduct an assessment of her apartment. § 87(2)(b) prevented § 87(2)(b) from gaining access and he called 911 at approximately 1:16 p.m. PO Ysia Collado, PO Phillip Billik, PO Gabriel Baaith, and PO Dina Ramos of the 46th Precinct responded. Unidentified officers threatened to break § 87(2)(b)'s door down, but they were unable to gain entry (**Allegation A**). A supervisor was requested and Sgt. Daliza Matos-Lugo and PO Samuel Mercado of the 46th Precinct arrived, but were also unable to gain entry. Sgt. Matos-Lugo requested that ESU and the Duty Captain respond to the scene, and PO Olivier Bagley and Det. Joseph Cortez of ESS 4 responded to the scene. PO Bagley and Det. Cortez threatened to break § 87(2)(b)'s door down but they were unable to convince § 87(2)(b) to open the door (**Allegations B and C**). Captain Theodore Federoff of the 30th Precinct arrived and instructed PO Bagley and Det. Cortez to remove the peephole, insert a camera, and then forcibly open the door, which they did, so § 87(2)(b) could be taken to the hospital (**Allegations D, E, and F**). PO Bagley and Det. Cortez used physical force to remove § 87(2)(b) from her apartment (**Allegations G and H**). PO Bagley, Det. Cortez, and other officers handcuffed § 87(2)(b) and physically escorted her outside. PO Bagley and Det. Cortez then re-entered § 87(2)(b)'s apartment and conducted a search of it (**Allegations I and J**). The locksmith secured § 87(2)(b)'s apartment door, PO Collado and PO Billik escorted § 87(2)(b) to § 87(2)(b), and all other officers left the scene.

§ 87(2)(b) provided several audio recordings of the incident which capture allegations; clips of the recordings have been placed below. Audio SnagIts 1, 2, and 3 can be found at Board Reviews 01, 02, and 03 respectively; the transcriptions can be found at 04 Board Review. Video footage was obtained but did not capture any allegations and only showed § 87(2)(b) being led out of her apartment building. The SnagIt clip of this footage has not been placed below but it can be found at 05 Board Review, and the transcription can be found at 06 Board Review.



AudioSnagIt1.mp4



AudioSnagIt2.mp4



AudioSnagIt3.mp4

This case was closed after 90 days because of difficulties interviewing the subject officers. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was determined to be suitable for mediation; however, § 87(2)(b) did not wish to mediate § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On April 13, 2017, a FOIL receipt confirmed that § 87(2)(b) had not filed any Notices of Claim regarding the incident (07 Board Review).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first complaint with the CCRB (08 Board Review).
- PO Bagley has been a member of the NYPD for 10 years and was a subject officer in one previous case, 201009704, which was mediated. § 87(2)(g)
- Det. Cortez has been a member of the NYPD for 10 years and has been a subject officer in seven previous cases resulting in 12 allegations, none of which were substantiated. In Case 201606335, it was also alleged that Det. Cortez entered and searched an apartment after an EDP was removed to the hospital. This case is pending board review.
- Captain Federoff has been a member of the NYPD for 19 years and was a subject officer in one previous case, 200103340, which contained substantiated allegations of a refusal to provide name and shield and discourteous demeanor/tone. Command Discipline was recommended by the Board, but the NYPD disposition and penalty are not noted. § 87(2)(g)

Potential Issues

- PO Mercado, PO Collado, PO Billik, PO Ramos, PO Baaith, and Captain Federoff were identified by the investigation as officers who responded to the scene. § 87(2)(b)

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that officers threatened to break her door down, and the audio recordings she provided contained multiple officers making these threats. Two of the officers who made these threats were females but did not identify themselves by name in the recording and § 87(2)(b) could not provide a description of them. Additionally, six female officers and EMTs responded to the scene. § 87(2)(g)
- Sgt. Matos-Lugo, PO Bagley, and Det. Cortez stated that Captain Federoff instructed PO Bagley and Det. Cortez to remove the peephole, insert a camera, and enter § 87(2)(b)'s apartment in order to remove her to the hospital. § 87(2)(g)

Allegations Not Pleaded

- **Discourtesy:** One of the audio recordings captures PO Bagley saying, "I can hear something, but I can't hear what they're fucking doing." § 87(2)(g)
- § 87(2)(b) did not complain about this statement or any profanity used by the officers.
- **Abuse of Authority:** During his CCRB interview, PO Bagley alleged that § 87(2)(b) was patted down and searched for weapons by other officers. § 87(2)(b) did not allege that she

was frisked or searched and no other officers stated that this occurred. § 87(2)(g)

- **Force:** § 87(2)(b) alleged that multiple officers “strong armed” her while escorting her to the ambulance and later to the hospital. § 87(2)(b)’s statements indicate that the officers were only guiding her and did not use any force beyond holding onto her, which is confirmed by the video footage that can be found at 05 Board Review. § 87(2)(g)

Allegation A – Abuse of Authority: Officers threatened to damage § 87(2)(b)’s property.

Allegation B – Abuse of Authority: Police Officer Olivier Bagley threatened to damage § 87(2)(b)’s Property.

Allegation C – Abuse of Authority: Detective Joseph Cortez threatened to damage § 87(2)(b)’s Property.

Allegation D – Abuse of Authority: Captain Theodore Federoff damaged § 87(2)(b)’s property

Allegation E – Abuse of Authority: Captain Theodore Federoff entered and searched § 87(2)(b):

Allegation F – Abuse of Authority: Captain Theodore Federoff forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) stated that at approximately 12:00 p.m. on November 10, 2016, she was alone in her § 87(2)(b) when she heard the voices of a caseworker from § 87(2)(b) and a locksmith outside her door (09 Board Review). The locksmith changed the lock on § 87(2)(b)’s apartment and someone attempted to open the door with a key, but § 87(2)(b) held the lock from inside her apartment so that they could not open the door. After about 15 minutes they said that they were going to call the police. At about 1:00 p.m., § 87(2)(b) heard a banging on her door and someone said, “Open up, police. We have to see you otherwise we’ll have to break your door down.” Sometime later, her peephole was “smashed in” so that it was hanging on the inside of her apartment. A small camera came through the hole where the peephole had been and officers said that they could see her. § 87(2)(b) was sitting on a chair in front of the door and did not have anything in her hands, and turned the camera back towards the door. An officer yelled at § 87(2)(b) not to touch the camera and someone told her to open the door and said that they had to see her and would have to break down the door, but § 87(2)(b) did not say anything or make any noises. § 87(2)(b)’s door was forced open by a machine and she stood up and moved her chair back. PO Bagley reached into the apartment to “yank” her out of the apartment, as discussed further under Allegation G.

§ 87(2)(b) works for § 87(2)(b), which is the court appointed guardian for § 87(2)(b), who hoards (10 Board Review). The court stated that a Heavy Duty Cleaning should be done, and § 87(2)(b) went to § 87(2)(b)’s apartment with a locksmith to serve as a witness to the conditions inside her apartment. When § 87(2)(b) could not gain access to the apartment he called 911. § 87(2)(b) showed the officers paperwork stating that his organization was the court appointed guardian of § 87(2)(b), and that she is currently diagnosed with schizo-affective disorder, schizo-affective disorder bipolar type, schizo-typo personality disorder, and schizo-typo personality traits. § 87(2)(b) asked the officers to

remove § 87(2)(b) to the hospital, as one of the court orders states that they are able to accept or refuse routine medical treatment, which includes hospitalization.

Sgt. Matos-Lugo stated that at approximately 1:43 p.m. on November 10, 2016, a unit requested that she respond to § 87(2)(b) in regards to a barricaded EDP (13 Board Review). Sgt. Matos-Lugo arrived to find a caseworker who stated that he was there to check on § 87(2)(b) in regards to her mental state, and officers who stated that § 87(2)(b) was locking the door from inside the apartment each time they tried to open the door with the key. Sgt. Matos-Lugo tried speaking to § 87(2)(b) in Spanish and English but she was completely silent. Sgt. Matos-Lugo did not remember if anything was said to § 87(2)(b) about breaking down her door, and said that she did not remember exactly what she said about the door. After 20 or 30 minutes, Sgt. Matos-Lugo requested that the Duty Captain and ESU respond to the scene. Later in the incident, Sgt. Matos-Lugo noted a strong odor coming out of the apartment. Sgt. Matos-Lugo believed that § 87(2)(b) was emotionally disturbed because she would not talk to the officers who were trying to check on her.

PO Bagley stated that he was called to § 87(2)(b) in regards to entering the apartment of a barricaded EDP, and when he and Det. Cortez arrived, EMS, four to six officers, a social worker, and a superintendent were present (11 Board Review). The social worker informed PO Bagley that § 87(2)(b) was a paranoid schizophrenic and they believed that she was off her medication. PO Bagley identified himself and told § 87(2)(b) that they did not want to break her door, but § 87(2)(b) did not respond. PO Bagley stated that once the Duty Captain, Captain Federoff, arrived, he instructed PO Bagley to remove the peephole so they could see where § 87(2)(b) was. PO Bagley and Det. Cortez asked the captain if they could insert a camera, and he told them to do so. PO Bagley removed the peephole, which damaged the peephole and the door, and inserted the camera. PO Bagley saw § 87(2)(b) sitting in a chair behind the door. From what PO Bagley remembered, the inside of the apartment was “pretty disheveled,” and he specified that there was “a lot of stuff.” Captain Federoff said that if they could maintain visual contact with § 87(2)(b) so she did not get a weapon they could force the door open, which they did. PO Bagley reached into § 87(2)(b)’s apartment to remove her. PO Bagley said that he could tell that there was something wrong with § 87(2)(b) because she would not answer the officers while they were trying to talk to her, made comments about aliens, and the social worker said she was schizophrenic.

§ 87(2)(g)
§ 87(2)(b) (12 Board Review). Det. Cortez did not say the social worker told him that § 87(2)(b) was a paranoid schizophrenic, but did say that he also told § 87(2)(b) that he did not want to have to force the door open. Det. Cortez clarified that Captain Federoff gave the order to open the door so they could remove § 87(2)(b) to the hospital, but did not feel comfortable with PO Bagley and Det. Cortez making entry without seeing § 87(2)(b) or determining whether she had any weapons. Det. Cortez explained that initially they removed the peephole but could not see § 87(2)(b), so they then inserted the camera. Det. Cortez added that the apartment smelled, and that § 87(2)(b) was standing right in front of the door screaming and yelling when they opened the door. Det. Cortez stated that he and PO Bagley pulled § 87(2)(b) out of her apartment.

At 00:01 in AudioSnagIt1, a female says, “We’ll knock out – we’ll knock down this door, you have to open regardless, okay?” (01 Board Review). At 00:00 in AudioSnagIt3, a different female says, “You don’t want us to open – to break the door, right? Just open the door,” (03 Board Review). At 00:01 in AudioSnagIt2 PO Bagley identifies himself and then says, “Can you

open up so we don't have to break your door down?" (02 Board Review). At other points of the audio recordings PO Bagley makes the statements, "I don't want to have to break your door down," and "I don't want to break your door down," twice (02 and 03 Board Review).

When § 87(2)(b) called 911 he told the operator that he worked for § 87(2)(b) and one of his clients, who was incapacitated and emotionally disturbed, was refusing entry to the apartment which they have a court order to access (14 Board Review).

The Ambulance Call Report confirmed that § 87(2)(b) called 911 for a barricaded EDP, and states that § 87(2)(b) was agitated, uncooperative, paranoid, and lacks hygiene. The narrative also notes that the apartment was messy and cluttered with trash (15 Board Review).

Patrol-Guide Procedure 221-13 states that emotionally disturbed persons must be taken into protective custody when they are conducting themselves in a manner likely to result in a serious injury to themselves or others, and allows Duty Captains to direct further action as necessary (16 Board Review). When officers believe there is an emergency occurring within a location they may enter without a warrant as long as the search is not primarily motivated by the intent to arrest or seize evidence. People v. Greenleaf, 222 A.D.2d 838 (1995) (17 Board Review).

It is undisputed that § 87(2)(b), acting as § 87(2)(b)'s court appointed guardian, called 911 and asked the responding officers to remove her to the hospital. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Force: Police Officer Olivier Bagley used physical force against § 87(2)(b)

§ 87(2)(b) :

Allegation H – Force: Detective Joseph Cortez used physical force against § 87(2)(b)

§ 87(2)(b) :

§ 87(2)(b) stated that after the door opened, she saw an officer, identified by the investigation as PO Bagley, standing outside of her apartment, along with several other officers (09 Board Review). PO Bagley reached into the apartment, and put his hand or hands on one or

both of § 87(2)(b)'s shoulders, and "yanked" her out of her apartment. § 87(2)(b) did not try to resist being pulled out of her apartment because it happened very quickly. In the hallway, PO Bagley "yanked" § 87(2)(b) to the floor by putting his hands on both of her arms. § 87(2)(b) said that she was pulled off her feet, which made her lose her balance. Another officer possibly helped PO Bagley force § 87(2)(b) to the ground, but she did not feel hands on her body other than on her arms. § 87(2)(b) tried to keep her hands under her body to resist being placed in handcuffs, but her hands were forced behind her back and placed in handcuffs by officers she did not see. § 87(2)(b) was then escorted to the ambulance.

§ 87(2)(b) stated that after § 87(2)(b)'s door was opened, two officers entered her apartment and she cursed and yelled at them to get out of the apartment (10 Board Review). § 87(2)(b) could not see § 87(2)(b) because the officers were in front of her, but he saw the officers put their hands up in a "stop" motion and heard them tell her to stop moving and calm down, which made him think that she was moving towards them in an aggressive way. The officers restrained § 87(2)(b) without moving towards her, which made § 87(2)(b) think that she had moved towards them. When § 87(2)(b) exited her apartment she had already been placed in handcuffs and two officers were holding her arms.

Sgt. Matos-Lugo stated that she stood in the hallway near § 87(2)(b)'s door, but did not remember how § 87(2)(b) was taken out of her apartment or who handcuffed her (13 Board Review).

PO Bagley initially stated that once the door was opened, they pushed § 87(2)(b) out of the way and entered the apartment, but later in the interview, PO Bagley said he saw § 87(2)(b) sitting on the other side of the door and grabbed her by both of her shoulders so she could not flee into the apartment (11 Board Review). § 87(2)(b) called PO Bagley a "Nazi" and Det. Cortez a "faggot," and said something about "not getting taken by the Martians." PO Bagley brought § 87(2)(b) out of the apartment and she went limp. § 87(2)(b) passively resisted and said, "I'm not going," but other than that did not "fight" the officers. PO Bagley and Det. Cortez held § 87(2)(b) up by her arms and slowly lowered her to the ground so she did not get hurt. PO Bagley stated that he and Det. Cortez began placing § 87(2)(b) in handcuffs, and an officer from the precinct finished the process. § 87(2)(b) screamed things like, "You can't take me," and may have pulled her arm away but did not do anything "major." § 87(2)(b) was picked up from the ground and the patrol units went with § 87(2)(b) to EMS.

Det. Cortez largely corroborated PO Bagley's statement, with the exception that he stated that he and PO Bagley pulled § 87(2)(b) out of the apartment by her arms while § 87(2)(b) resisted by trying to pull backwards away from them (12 Board Review).

Patrol Guide Procedure 221-02 requires that officers use only the reasonable force necessary to gain control of a subject (18 Board Review).

It is undisputed that PO Bagley and Det. Cortez used physical force to take § 87(2)(b) out of her apartment, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

Allegation I – Abuse of Authority: Police Officer Olivier Bagley entered and searched § 87(2)(b)

§ 87(2)(b)

Allegation J – Abuse of Authority: Detective Joseph Cortez entered and searched § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

Neither § 87(2)(b) nor § 87(2)(b) stated that the officers entered the apartment after § 87(2)(b) was taken into the hallway (09 and 10 Board Review).

PO Bagley stated that after § 87(2)(b) was removed from the apartment and handcuffed, he and Det. Cortez re-entered § 87(2)(b)'s apartment to do a search to ensure that there were no other people or animals in the apartment that could be hurt or harmed, which he was trained to do after removing someone from an apartment (11 Board Review). There was nothing that made PO Bagley believe that there were people or animals in the apartment, and he was not instructed to conduct the search by anyone. PO Bagley stated that often when they secure a door they put a lock on it, and they need to ensure that they are not locking anyone into the apartment. Both PO Bagley and Det. Cortez entered the apartment. PO Bagley believed that the apartment had two bedrooms, a hallway, a bathroom, a living room, and a kitchen. The officers looked in all of these rooms in areas where people could be hiding, for example under a bed, but did not search for narcotics or other contraband. No one was found. PO Bagley estimated that the search took five minutes at most. PO Bagley and Det. Cortez were informed that the superintendent was there to fix the door so they did not have to, and they left the scene.

Det. Cortez stated that after § 87(2)(b) was removed he made sure there was no one else in the apartment that needed medical attention (12 Board Review).

The NYPD ESU Tactics Section Participant Guide from August 2015 instructs officers to conduct secondary searches, or a more thorough search for anyone hiding, in the lesson on barricaded perpetrators and perpetrator searches (19 Board Review).

Officers may conduct a protective sweep of a house after a valid entry and arrest if they reasonably believe, based on specific and articulable facts, that there is an individual posing danger to the officer or others in the area to be swept. Maryland vs. Buie, 494 U.S. 325 (1990) (20 Board Review).

§ 87(2)(g)

Squad: 3

Investigator: _____

	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date